UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Trailblazer Pipeline Company | Docket Nos. RP03-162-000
RP03-162-002

ORDER ON TECHNICAL CONFERENCE AND
DENYING REQUESTS FOR REHEARING

(Issued May 23, 2003)

1. On December 31, 2002, the Commission issued an order accepting and suspending Trailblazer Pipeline Company's (Trailblazer) proposed tariff sheets[1] pertaining to tariff issues involving creditworthiness, imbalance charges, the ROFR term matching cap, and capacity award procedures, subject to refund, and the outcome of a technical conference. Subsequently, the Commission held a technical conference on February 6, 2003. This order addresses those tariff sheets and issues set for technical conference. In addition, the order addresses a request for rehearing of the December 31 Order. For the reasons discussed below, this order denies the request for rehearing, and accepts Trailblazer's proposed tariff sheets, subject to further modification.

2. This order benefits shippers by permitting Trailblazer to implement reasonable tariff provisions that: will ensure that its shippers have the financial ability to pay for the pipeline services they use and provide Trailblazer with reasonable recourse when shippers become non-creditworthy; implement a ROFR term matching cap that is supported by all parties, and implement new capacity award procedures and imbalance charges that are just and reasonable.

I. Background

3. On November 29, 2002, Trailblazer filed revised tariff sheets pursuant to Section 4 of the Natural Gas Act (NGA), and Part 154 of the Commission's regulations. Trailblazer filed to comply with Article III of the Amended Stipulation and Agreement (Settlement

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[1] See Appendix.

Agreement) filed in Docket No. RP97-408 on November 20, 1998. Article III of the Settlement Agreement required Trailblazer to file a general rate proceeding to be effective no later than January 1, 2003. A number of parties protested Trailblazer's filing.

4. The Commission in its December 31 Order accepted tariff sheets pertaining to tariff issues involving creditworthiness, imbalance charges, the ROFR term matching cap, and capacity award procedures, subject to refund, conditions and a technical conference. The order accepted the tariff sheets effective the earlier of June 1, 2003, or a date the Commission specifies in an order issued after the technical conference. The Commission found that the protesting parties raised a number of issues that required further consideration and directed staff to convene a technical conference. On February 6, 2003, the Commission held a technical conference. At the conclusion of the conference the parties agreed to file initial comments by March 7, 2003, and reply comments by March 18, 2003.

5. In addition, the December 31 Order accepted and suspended other tariff sheets pertaining to reductions to tariff rates, effective January 1, 2003, subject to refund, and the outcome of a hearing. Lastly, the Commission accepted certain other tariff sheets pertaining to tariff issues, effective January 1, 2003, subject to conditions.

II. Late Interventions

6. Numerous parties have filed motions to intervene in this proceeding since the December 31 Order was issued. The Commission finds that no party is prejudiced by accepting late intervention at this stage of the proceeding nor would it disrupt the proceeding or place additional burdens on existing parties. Accordingly, Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[2] we grant these motions to intervene out-of-time.

III. Request for Rehearing

7. On January 30, 2003, the Indicated Shippers filed a request for rehearing of the order issued in this proceeding on December 31, 2002. Indicated Shippers challenges five areas of the Commission's December 31 order. We will address one of the five areas immediately below, concerning Trailblazer's proposal to terminate replacement shipper contracts when it terminates the releasing shipper's contract because of credit issues. We address the remaining four areas in the specific issue sections of this order.

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[2] 18 C.F.R. § 385.214(d) (2002).

8. Indicated Shippers asserts that the Commission erred by not: (1) allowing the released capacity of a shipper which has become non-creditworthy to be posted and made available to the highest bidder under ROFR rules; (2) imposing a five-day deadline on Trailblazer's decision to cancel a replacement shipper's contract; and (3) requiring that all replacement shippers should receive uniform treatment of contracts from the same releasing shipper. On April 15, 2002, the Commission issued an order in Natural Gas Pipeline Company of America that, among other things, denied a request for rehearing filed by BP America Production Company and BP Energy Company (BP) which addressed these same rehearing issues.[3] As a result, the Commission denies Indicated Shippers' request for rehearing for the same reasons the Commission provided for denying the aforementioned request of BP.

IV. Creditworthiness Related Tariff Issues

9. For the sake of brevity, we will not repeat the arguments originally presented in the protests and discussed in the December 31 order. Instead, this section addresses those issues raised subsequent to the technical conference. Besides Trailblazer, comments were filed by United States Gypsum Company (USG), ONEOK Energy Marketing and Trading (ONEOK), Hastings Utilities (Hastings), and Indicated Shippers. Reply comments were filed by USG, Duke Energy Trading and Marketing (Duke), and Trailblazer.

A. Assurance of Payment (12 - Month Security Requirement)

1. Proposal

10. Trailblazer proposes changes to Section 17 (Evaluation of Credit) of the GT&C. Specifically, Trailblazer revises Section 17(b)(1) to require non-creditworthy shippers to provide prepayments for longer than the current three months of service, not to exceed one year, or one of three other assurance of future performance options.[4]

2. Comments and Reply Comments

11. Trailblazer claims its existing tariff provisions applicable to the assurances of payment does not sufficiently support multi-year contracts, a system expansion or

[3] Natural Gas Pipeline Company of America, 103 FERC ¶ 61,069 (2003).

[4] The other assurance of future performance options include: (1) an irrevocable letter of credit; (2) a security interest in collateral; and (3) a guarantee by a person or another entity.

extension if the shipper is not creditworthy. Trailblazer contends the proposed revision to increase the assurance of future performance serves a two-fold purpose. First, Trailblazer states it increases the likelihood that a shipper contracting for capacity actually can pay for the service. Second, Trailblazer claims prepayment can significantly protect it if a shipper files for bankruptcy.

12. Trailblazer contends that although the Commission rejected tariff sheets in North Baja Pipeline, L.L.C. that provided a pipeline could require up to 12 months prepayment, one can distinguish North Baja from Trailblazer's filing.[5] Trailblazer claims that in North Baja the Commission relied upon cases which predated the recent deterioration of credit, while Trailblazer clearly shows the changed circumstances which warrant an increased level of prepayments.[6] As part of its comment filing, Trailblazer proposes to modify its tariff language by providing a sliding scale of prepayments (from 4 to 12 months) based upon contract length as an alternative to the 12-month prepayment requirement. Trailblazer contends its sliding scale proposal mitigates the perceived adverse implications noted in North Baja that a blanket rule under which it could require a prepayment or other assurance of future performance for 12 months of service of a non-creditworthy shipper in every situation. Trailblazer emphasized that it offers this proposal as a compromise package on credit issues provided that the Commission accepts its proposals with respect to shortening the prior notice time periods for suspension or termination. Trailblazer states that absent the adoption of the compromise proposal on that basis, it elects to pursue its original proposal as filed.

13. Indicated Shippers contends a 12-month prepayment requirement is excessive, and opposes the three-month prepayment standard adopted by the Commission in North Baja. USG also maintains that Trailblazer's proposal is contrary to Commission precedent and urges the Commission to reject it. Indicated Shippers states a three-month prepayment provides complete protection against a shipper's failure to pay, and claims Trailblazer seeks contract protection against remarketing risk, and not just payment protection. Indicated Shippers asserts that Trailblazer faces little remarketing risk because its capacity is fully subscribed. Indicated Shippers contends a 12-month period would aggravate the liquidity problems that already plague the industry. Indicated Shippers also requests that the Commission clarify that the three-month standard applies to a letter of credit, and a guarantee by a third party.

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[5] North Baja Pipeline, L.L.C., 102 FERC ¶ 61,239 (2003) (North Baja).

[6] See Initial Comments by Trailblazer Pipeline Company on Technical Conference at 9-13, 21 (arguing that Trailblazer's proposal on credit is being made in the context of unprecedented declining credit and liquidity throughout the industry, and that North Baja relied on precedent that predated these changed circumstances).

14. Indicated Shippers proposes an alternative approach, where an uncreditworthy shipper could have the option of prepaying for service on a monthly basis by making prepayments by the 20th day of the month preceding the service month. Indicated Shippers argues that if a shipper failed to make a prepayment by that deadline, Trailblazer could immediately suspend or terminate service, and if terminated, Trailblazer could immediately remarket the capacity.

15. In reply comments, both Indicated Shippers and USG oppose Trailblazer's proposal to implement a sliding scale prepayment approach based upon the contract term. Both parties continue to maintain that financial security should be limited to three months of charges.

16. In its reply comments, Trailblazer states that even a prepayment for 12 months of service will not come close to covering the recontracting risk for a ten-year contract. Trailblazer contends that although its remarketing risk may currently be low, that can change overnight. Trailblazer asserts that Indicated Shippers' alternative under which non-creditworthy shippers would pay in advance for capacity has merit. Trailblazer contends that if the Commission does not adopt its proposed sliding scale prepayment approach, the Commission should consider Indicated Shippers' suggestion.

c. Commission Finding

17. The Commission finds that requiring security equal to 12 months of service charges is excessive for shippers subscribing to service after the pipeline is in operation. When undertaking a system expansion or constructing a greenfield pipeline, a transporter and its lenders bear substantially greater risk of cost recovery. The Commission has responded to this risk by allowing a pipeline to require longer terms for security from its initial firm shippers at the time the project is certificated. Thus, the longer security requirements applicable to new construction does not apply to Trailblazer.

18. The Commission held that “the three-month prepayment has been the standard used throughout the natural gas industry in the past and in the new post-Order No. 636 industry. We agree that a prepayment requirement for any period longer than 3 months is excessive and should be rejected.”[7] The Commission accepted Northern Natural Gas Company's

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[7]Florida Gas Transmission Company, 66 FERC ¶ 61,140 at 61,261 (1994). This order was vacated in 66 FERC ¶ 61,376 (1994), but the Commission’s assertion of 3 months’ prepayment as industry standard was reiterated in the second order, 66 FERC

(continued...)

offer to modify its security requirements so that firm shippers would only have to provide security up to three months of reservation charges.[8] The Commission found that this security "will accommodate the concerns of shippers while protecting Northern in the event that a firm shipper defaults on its obligations." In the North Baja proceeding, the Commission found that while requiring longer than three month's security may be acceptable in the precedent agreements leading up to the issuance of a certificate, the tariff requirements that apply to shippers once the pipeline is in operation must limit the security requirement to three months of transportation charges.[9] Although Trailblazer maintains that North Baja relied on cases that were decided before widespread changes in the industry, the Commission has consistently and recently upheld the three-month payment standard.[10] Moreover, in the Natural proceeding, where Natural argued that its existing tariff provisions applicable to the assurances of payment required of a non-creditworthy shipper were no longer adequate in today's environment, the Commission required that Natural limit the security requirement to three months of transportation charges.[11]

19. The Commission recently addressed a sliding scale proposal in Gulf South,[12] similar to Trailblazer's proposal filed herein. The Commission rejected Gulf South's sliding scale proposal finding that "[a] prepayment requirement for any period longer than three months is excessive and unjustified." Trailblazer has cited no instances where a three-month prepayment has proved to be inadequate. The three-month payment standard is designed to cover exposure during the period it would take to terminate a contract, and not to protect the pipeline against remarketing risk. Therefore, we find that Trailblazer must revise its tariff to limit the security requirement to three months of transportation charges.

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[7](...continued)
¶ 61,376 at 62,257 (1994).

[8]Northern Natural Gas Company, 102 FERC ¶ 61,076 at P 36-37 (2003) (Northern).

[9]North Baja, 102 FERC ¶ 61,239 at P 15.

[10]See Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 35-36 (2003) (Gulf South), (rejecting a four-to-twelve month sliding scale prepayment proposal by Gulf South similar to Trailblazer's proposal); see also PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 34 (2003) (PG&E).

[11]Natural Gas Pipeline Company of America, 102 FERC ¶ 61,355 at P 30 (2003) (Natural).

[12]Gulf South, 103 FERC ¶ 61,129 at P 35.

20. Alternatively, Trailblazer may file to justify the prepayment approach advocated by Indicated Shippers where an uncreditworthy shipper could have the option of prepaying for service on a monthly basis by making prepayments by the 20th day of the month preceding the service month. The Commission wants to clarify that if Trailblazer makes such an election, and a prepayment is not made by the 20th day of the month preceding the service month, an adequate notice must be provided prior to the suspension or termination of service. Contrary to Indicated Shippers' suggestion that service could be suspended immediately upon failure to make a monthly prepayment, the Commission clarifies that service could not be suspended until the beginning of the month following a failed prepayment. This is because a shipper would have already prepaid for service that is occurring in the current month and as such would be entitled to receive such service through the end of the month. In addition, the Commission clarifies that Trailblazer could not terminate the service agreement until a 30-day notice to the shipper has run its course. The Commission's regulations require that notice be provided 30 days prior to the termination of a tariff or service agreement (i.e., contract).[13]

21. We agree with Indicated Shippers regarding its request for clarification that the three-month standard apply to a letter of credit, and a guarantee by a third party. Therefore, we will require Trailblazer to revise its tariff to include language clarifying that the limitation for payment in advance of three months service also applies as to the amount of security required in a (1) standby irrevocable letter of credit, (2) collateral security, or (3) a guarantee by a creditworthy entity.

B. Timelines Applicable to Delinquencies

1. Proposal

22. Trailblazer proposes to modify Section 6.9 (Delinquency in Payment) of its General Terms and Conditions (GT&C) by shortening the time period (from 30 to 15 days) for suspension or termination of service when a shipper is delinquent in its payments to Trailblazer. Section 6.9(a)(1) provides that if a shipper does not remedy a delinquency within ten days of receiving an initial written notice, Trailblazer shall give a final notice of its intent to curtail. If the deficiency is still not remedied within five days of such final notice, Trailblazer may suspend service. Trailblazer will simultaneously notify the Commission in writing of any curtailment pursuant to this section.

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[13] See 18 C.F.R. § 154.602 (2000).

23. Trailblazer makes no change to Section 6.9(a)(2), which provides that it will not curtail, or will cease curtailing, if a shipper cures any deficiency and provides adequate assurances of future performance.

24. Trailblazer also added a new provision to Section 6.9(a)(3). Under this provision, if a shipper is again deficient in payment within six months after the prior deficiency or fails to maintain any assurance of future performance, then Trailblazer may suspend or terminate service to such shipper within five business days after providing notice unless the shipper remedies the deficiency and provides or restores adequate assurance of future performance within that time period.

2. Comments and Reply Comments

25. Trailblazer contends its current tariff provisions are inadequate with respect to the time periods taken before Trailblazer can take any action to suspend or terminate service. Trailblazer claims a shipper will likely owe Trailblazer for about three months of service by the time Trailblazer can suspend or terminate service.

26. Indicated Shippers claims that tariff provisions that address delinquency situations must exclude situations where a shipper has a good faith billing dispute with Trailblazer. In its reply comments, Trailblazer agrees that its provisions related to delinquencies in payment should not cover situations where there is a good faith billing dispute. In Trailblazer's view, Section 6.9(b) of the GT&Cs covers this situation.

3. Commission Finding

27. We find Trailblazer’s 6.9(a)(1) proposal, allowing suspension of service to a shipper that is delinquent and has not remedied the delinquency within 15 days of receiving written notice from Trailblazer is appropriate. Fifteen days will provide shippers sufficient time to remedy a delinquency that may have resulted from an unusual circumstance or an administrative mixup. In addition, 15 days will provide greater financial protection to Trailblazer in a circumstance where a shipper experiences financial difficulty and won't be able to remedy the situation. Although we will allow Trailblazer to suspend service after providing 15 days notice, the Commission's regulations require a 30-day notice prior to the termination of a tariff or service agreement. Coincident with the notice of suspension, Trailblazer may also provide the shipper written notice that, if the shipper fails to remedy the delinquency within the 15-day notice of suspension period, Trailblazer will terminate the service agreement in 30 days. Trailblazer should also provide written notice to the Commission at least 30 days prior to terminating a shipper's service agreement. As a result, we will require Trailblazer to revise its tariff by removing the right to terminate service within 15 days of notice. It may add language which allows it to terminate the

service agreement within 30 days of written notice consistent with our regulations. Our finding herein conforms to a Natural order issued March 31, 2003.[14]

28. We find ambiguous Section 6.9(a)(2), that provides Trailblazer will not curtail, or will cease curtailing, if a shipper cures any deficiency and provides adequate assurances of future performance. It is not clear if Trailblazer proposes that a delinquent shipper is automatically required to provide adequate assurances of future performance, or, if a shipper must first be deemed not creditworthy (through Trailblazer's evaluation of a shipper's credit, pursuant to Section 17 of the GT&C) before Trailblazer requires it to provide the assurance of adequate future performance. If Trailblazer proposes that an otherwise creditworthy shipper missing one payment must provide assurance of adequate performance, Trailblazer has failed to justify such a proposal. One delinquency (that the shipper satisfies) is insufficient, by itself, to trigger a requirement for providing further assurances of creditworthiness. As discussed below, Trailblazer proposes new tariff provisions regarding the need to provide assurance of creditworthiness, and those provisions, as modified, establish sufficient criteria as to when assurances of creditworthiness are required. Thus, Trailblazer must remove the provision in 6.9(a)(2) requiring shippers to provide assurances of creditworthiness for delinquency.

29. The Commission accepts Trailblazer's proposed Section 6.9(a)(3) language subject to modification. This provision allows Trailblazer to suspend or terminate service, within five business days after providing notice, if a shipper is again deficient in payment within six months after the prior deficiency. We permit Trailblazer to suspend service within five business days. However, as we discussed above, Trailblazer must provide 30 days written notice before terminating a service agreement. We require Trailblazer to revise its tariff to remove the five-day termination schedule but may provide for a 30-day notice period consistent with our regulations. It is the responsibility of a shipper to meet its obligations in a timely fashion. We do not find it unreasonable that a shipper having a second delinquency within a six-month period must meet a stricter time frame for payment. We find it appropriate that Trailblazer can quickly suspend service to a shipper who is repeatedly late in its payments.

30. Section 6.9(a)(3) also provides Trailblazer may suspend or terminate service to a shipper within five business days after providing notice unless the shipper restores adequate assurance of future performance within that time period. For similar reasons discussed above, we believe that any requirement for adequate performance would be more appropriately included in the context of Trailblazer's Section 6.10 language dealing with

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[14] Natural, 102 FERC ¶ 61,355 (2003).

shippers that are found not creditworthy. Therefore, we direct Trailblazer to delete this language from Section 6.9(a)(3).

31. Section 6.9(b) of Trailblazer's GT&C provides "in event of a billing dispute, withholding of payment by Shipper shall be considered a delinquency in payment except to the extent specified in the applicable Agreement, subject to Section 16 of the GT&C." It is not clear from this provision that a shipper having a good faith billing dispute with Trailblazer is exempt from the delinquency provisions. As a result, as requested by Indicated Shippers, we will require Trailblazer to refile to modify this provision to clarify that any shipper that is delinquent in payments under any agreement resulting from good faith billing disputes will not result in suspension of service to a shipper or termination of the service agreement.

C. Timelines Applicable to Deterioration of Credit

1. Proposal

32. Trailblazer proposes to include a new tariff provision, Section 6.10 (Deterioration of Credit) in its GT&C. Section 6.10(a) provides that, if at any time Trailblazer has reason to question a shipper's credit or ability to pay, Trailblazer may notify the shipper in writing that it has ten days either to: (1) demonstrate that it is creditworthy, or (2) comply with the means for adequate assurances of future performance. If the shipper fails to satisfy this requirement by the end of the ten-day notice period, Trailblazer may suspend or terminate service to the shipper.

33. Section 6.10(b) provides that any time Trailblazer reasonably determines based on adequate information available to it that a shipper is not creditworthy, Trailblazer may notify the shipper in writing that it has ten days to comply with the means for adequate assurance of future performance. If the shipper does not comply, Trailblazer may suspend or terminate service to the shipper.

34. Sections 6.10(a) and (b) both contain language stating that if the shipper fails to maintain any assurance of future performance, Trailblazer may terminate service within five business days after providing notice unless shipper restores the assurance of future performance within that time period.

35. Section 6.10(c) provides that if a shipper experiences a rapid deterioration of financial condition, Trailblazer can suspend or terminate service within three business days after a written notification, unless a shipper provides adequate assurance of future performance within the notice period. Evidence of a rapid deterioration of financial condition may include, but is not limited to, a below investment grade rating by one or

more of the rating agencies (i.e., Fitch, S&P, Moody's, etc.) on the securities of a shipper or its parent company or recurring or extended delinquency in payment.

36. Section 6.10(d) provides that if Trailblazer suspends service, the suspension will continue until the shipper satisfies Trailblazer that it has returned to a reasonable financial condition.

37. Section 6.10(e) requires Trailblazer to simultaneously notify the Commission in writing of any suspension or termination of service under this section.

2. Comments and Reply Comments

38. Trailblazer argues that because changes in credit ratings have become more frequent and rapid, interstate pipelines need to have a shorter response time as well, so that effective action can be taken as credit deteriorates. Trailblazer contends that its proposed more rapid response times provide a more realistic opportunity to terminate service prior to a bankruptcy filing by a non-creditworthy shipper.

39. Indicated Shippers contends that the tariff must provide an adequate period for a shipper to provide additional security. Indicated Shippers and USG argue that Commission policy requiring that a shipper have five business days to make a one month prepayment and 30 days to provide security for service over the next three months is preferable. USG objects to Trailblazer's proposal that permits it to terminate service on five days notice noting that the Commission requires a 30 day-notice period. USG also opposes the three-day time period to demand credit assurances in the event of a shipper's rapid deterioration of financial condition. USG contends that Trailblazer failed to demonstrate why it needs a provision in addition to the proposed timelines that address an ordinary deterioration of credit.

40. In its reply comments, Trailblazer contends that in Tennessee the Commission did not preclude pipelines from proposing alternative timelines.[15] Trailblazer claims that its proposal, which generally permits a shipper ten days to provide assurance of future payment rather than Tennessee's proposal to only five days, falls in the alternative timeline category contemplated by the Commission.

3. Commission Finding

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[15] Tennessee Gas Pipeline Company, 102 FERC ¶ 61,075 at P 32 (2003) (Tennessee).

41. The Commission finds that Trailblazer fails to justify its Section 6.10(b) proposal to require a shipper determined as non-creditworthy to provide security within ten business days. Trailblazer's proposal requires a shipper that has not defaulted or missed payments to Trailblazer to obtain collateral within ten business days. We are concerned that this is not enough time given that the shipper may be faced with requests from multiple pipelines to provide collateral. Further, Trailblazer fails to explain why it is reasonable to expect a shipper to obtain three months of collateral within ten business days. The amount of collateral a shipper would need is potentially burdensome and could impede the movement of gas. In addition, ten business days provide an insufficient amount of time for the Commission to respond to a complaint filed by the shipper contending that it was unfairly treated by Trailblazer. Therefore, we reject this provision.

42. While we reject Trailblazer's proposal to require three months of collateral within ten business days, Trailblazer may file to justify a specific notice period as providing shippers with a reasonable opportunity to provide collateral or may adopt the following approach, which the Commission proposed in Natural, Northern, and Tennessee, and which the Commission finds establishes a reasonable balance between Trailblazer's legitimate need to obtain security and the shipper's need for a sufficient time to arrange for such security. Under this approach, when a shipper loses its creditworthiness status, the shipper must, within five business days, pay for one month of service in advance to continue service. This procedure allows the shipper to have at least 30 days to provide the next three months of security for service, which could be either a prepayment or one of the other three assurance of future performance options permitted by Trailblazer. If the shipper fails to provide the required security within these time periods, Trailblazer may suspend service immediately. Further, Trailblazer may provide simultaneous written notice that it will terminate the service agreement within 30 days if the shipper fails to provide security. Trailblazer should also provide written notice to this Commission at least 30 days prior to terminating a shipper's service agreement.

43. Such a procedure would provide Trailblazer with additional security for the time period between the loss of creditworthy status and the time the shipper must provide the additional collateral. Prepayment of a month's charges is also similar to other industries that require advance payment as a guarantee for future service provision.

44. The last sentence of Section 6.10(b) of Trailblazer's proposal permits Trailblazer to terminate, within five business days, service to a shipper who fails to maintain its assurance of future performance, unless the shipper restores the assurance of future performance within that time frame. The Commission finds that the same procedure applied when a shipper loses creditworthiness must be applied here where the shipper fails to maintain its assurance of performance. For example, if a shipper relies on a guarantee by another creditworthy entity and that entity loses its creditworthiness status, Trailblazer fails to

show that five business days provides the shipper with sufficient time to arrange to obtain three-month's prepayment.

45. Trailblazer's proposed Section 6.10(a) provides that if at any time Trailblazer has reason to question a shipper's credit or ability to pay, Trailblazer may notify the shipper in writing that it has ten days either to demonstrate that it is creditworthy, or to comply with the means of adequate performance under Section 17(b) of the GT&C. We reject this language because it is confusing. It is not clear how many days a shipper has to demonstrate that it is creditworthy, or how long it would take Trailblazer to notify a shipper it is either creditworthy or non-creditworthy. If Trailblazer notifies a shipper that it is not creditworthy, it is not clear how much time a shipper has to provide the necessary assurance of payment. Trailblazer's Section 6.10(b) already outlines the procedures Trailblazer must take once it determines a shipper is non-creditworthy. Therefore, under the circumstance where Trailblazer questioned a shipper's credit, Trailblazer could revise Section 6.10(a) to establish the time period given to the shipper to provide Trailblazer with the information needed to evaluate the shipper's credit. After Trailblazer completed its analysis, if a shipper was deemed not creditworthy, Section 6.10(b) and the accompanying request for assurance of future payment and time frames for suspension of service would apply.

46. We find unjustified Trailblazer's proposed Section 6.10(c), providing for suspension of or termination within three business days if a shipper experiences a rapid deterioration of financial condition. Trailblazer states a rapid deterioration of financial condition may include, but is not limited to, a below investment grade rating by one or more of the rating agencies (i.e., Fitch, S&P, Moody's, etc.) on the securities of a shipper or its parent company or recurring or extended delinquency in payment. Trailblazer could use this same financial information to determine if a shipper is not creditworthy under Trailblazer's proposed Section 6.10(b). Trailblazer's proposed Section 6.10(c) effectively creates and subjects a second class of non-creditworthy shippers to a shorter suspension time frame than other shippers found not creditworthy. Therefore, we reject this tariff provision and require Trailblazer to delete it.

D. Suspension and Assessment of Charges to Shippers

1. Proposal

47. Trailblazer's effective tariff and its proposed tariff language provides for the suspension and/or termination of service. Trailblazer's tariff is silent regarding the assessment of any charges that may be applicable to a shipper when service is suspended.

2. Comments and Reply Comments

48. In its initial comments, Trailblazer states that one of the issues raised at the technical conference was whether reservation charges continue when service has been suspended. Trailblazer contends that the Commission's decision in Tennessee, where the Commission ruled that demand charges could not be assessed to shippers where service was suspended, creates an anomaly. Trailblazer argues a non-creditworthy shipper could hold capacity off the market during a suspension period when demand is low, until market conditions change, without paying at all for that capacity reservation, whereas a creditworthy customer would still have to pay. Trailblazer asserts that since a suspended shipper retains the right to capacity, it should continue to pay for that right. Trailblazer contends that otherwise it will have little choice but to terminate rather than suspend service.

3. Commission Finding

49. The Commission disagrees with Trailblazer's position that a pipeline should be permitted to assess reservation charges to which it had suspended service. In Tennessee, the Commission explained that when service is suspended, a shipper's service is stopped, and while the shipper must pay the pipeline for service up to the date service was suspended, it should not be held responsible for future charges.[16] Since that time, we have issued two additional orders further clarifying our position.[17] Trailblazer argues that a non-creditworthy shipper could hold capacity off the market during a suspension period when demand is low without paying for that capacity reservation. If Trailblazer fears a shipper may engage in such tactics, it need not suspend service, but can continue to require payment of reservation charges, and terminate service upon the required 30-days notice. Indeed, if Trailblazer terminates service under the contract, it cannot continue to insist on payment, and Trailblazer has not satisfactorily demonstrated that suspension of service for failing to maintain creditworthiness should be treated differently.[18] Trailblazer has not provided sufficient support for allowing the pipeline to refuse to provide service to shippers, while still collecting reservation charges as if such service was still available. Thus, consistent

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[16] Tennessee, 102 FERC ¶ 61,075 at P 32.

[17] Gulf South, 103 FERC ¶ 61,129 at P 56; PG&E, 103 FERC ¶ 61,137 at P 57-58.

[18] The Commission has allowed pipelines the added remedy of suspending service for failure to provide collateral on shorter notice than termination of service. But the provision of this additional right does not carry with it the consequent ability to charge for service that the pipeline has chosen not to provide. The pipeline should not be entitled to repudiate its obligation under the contract while still insisting that it benefit as if the contract was still in effect.

with its rulings in Tennessee, Gulf South, and PG&E, the Commission directs Gulf South to revise its tariff to clarify that charges will not accrue while service is suspended.

E. Impact of Credit Status on Capacity Release Transactions

1. Proposal

50. Neither Trailblazer's existing tariff nor proposed tariff contains any language covering a capacity release by a replacement shipper found not creditworthy.

b. Comments and Reply Comments

51. USG contends that Trailblazer does not make clear how its creditworthiness provision will interact with its capacity release provisions. USG questions whether a shipper retains the right to release capacity if a shipper's service is suspended. In its reply comments, Trailblazer states that unless service is terminated, it is unclear whether Trailblazer's Tariff precludes a release of capacity.

52. In supplemental reply comments, Indicated Shippers contends that a suspended shipper should be able to release capacity. Indicated Shippers states that the Commission has determined that a pipeline can neither require an uncreditworthy shipper to obtain the pipeline's consent to release capacity nor bar an uncreditworthy shipper from recalling released capacity. Indicated Shippers argues the same reasoning indicates that Trailblazer cannot bar a suspended shipper from releasing capacity.

3. Commission Finding

53. The Commission has found that a shipper found to be non-creditworthy has the right to recall or release capacity. In this instance, the shipper pays for, and uses, its capacity on the pipeline's system. However, as discussed in the above section, if a shipper has its service suspended, it is not charged, and cannot use, its capacity on the pipeline's system. We do not believe it would be equitable to allow a shipper to have the right to recall or release capacity on a pipeline's system when it was not paying for that capacity. As a result, we find no merit in Indicated Shippers' argument that because a non-creditworthy shipper must be permitted to release capacity, it follows that Trailblazer cannot bar a suspended shipper from releasing capacity. If service is suspended, a shipper may neither release nor recall capacity.[19]

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[19] If a releasing shipper has released capacity prior to being suspended, the replacement shipper will not be suspended and its contract will stay in effect, with the

(continued...)

F. Criteria for Evaluation of Credit

1. Proposal

54. Trailblazer proposes to add language to Section 17.1(a)(1) regarding the criteria to be used by Trailblazer to appraise a shipper's credit. The proposed language provides that "Trailblazer may rely on publicly available information or other information available to it where adequate to assess credit; provided however, that Trailblazer shall provide its analysis to Shipper and identify or provide to Shipper any information used in its analysis prior to taking action on such information."

2. Comments and Reply Comments

55. Trailblazer states that it proposes no major change to its existing tariff provisions on how credit is evaluated. Rather, Trailblazer contends it proposes to modify the procedures for managing credit risk when an existing or potential shipper is not creditworthy. Trailblazer states that it relies heavily on the actions of the major financial rating agencies in assessing creditworthiness. Nevertheless, Trailblazer contends that while such ratings are critical, they will not always be conclusive. Trailblazer stresses the importance of the ability to develop appropriate assurances of performance based on the shipper's specific circumstances.

56. Both Indicated Shippers and USG claim that Trailblazer does not provide guidelines regarding its response to a request by a shipper for an upgrade of its creditworthiness status. Indicated Shippers states that the Commission should require Trailblazer to respond to an upgrade request within two business days. USG contends that for a shipper whose credit status has returned to a satisfactory level, the Commission should require Trailblazer to file proposed tariff language specifying the mechanism and time periods within which Trailblazer would return any security or prepayment, with interest, previously provided to Trailblazer.

57. In response to Indicated Shippers' and USG's claim that Trailblazer's tariff procedures do not specifically address the change from noncreditwory to creditworthy

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[19](...continued)
pipeline retaining all payments by the replacement shipper during the period of the releasing shipper's suspension. See Florida Gas Transmission Co., 101 FERC ¶ 61,172 (2002) (replacement shipper cannot be terminated until releasing shipper is terminated); see also Centerpoint Gas Transmission Co., 102 FERC ¶ 61,223 at P 7 (2003).

status, Trailblazer contends that it has operated many years without such tariff language so there is no reason to believe it is necessary to include such tariff language now. However, if the Commission requires the specification of procedures in its tariff, Trailblazer states that prepayments should not be returned to the shipper, but instead should be applied to service rendered by offsetting a shipper's monthly bill.

3. Commission Finding

58. Consistent with our ruling in Tennessee and Natural, we require Trailblazer to include objective criteria for determining whether a shipper is creditworthy in its tariff.[20] Pursuant to Section 5 of the Natural Gas Act, we find that Trailblazer's current tariff is unjust and unreasonable in that it allows Trailblazer too much discretion in determining when a shipper becomes non-creditworthy and allows for possible undue discrimination. With the increased importance of the creditworthiness evaluation process and particularly in light of the proposed shortened notification periods it is important that the process be open and objective. Accordingly, we require Trailblazer to set forth objective financial analysis and criteria to determine a shipper's creditworthiness in its tariff. Any shipper which meets the criteria would be deemed creditworthy. We are not persuaded by Trailblazer's argument that it would be compelled to terminate shipper service based upon a rating agency's action. Under Trailblazer's proposed tariff, if a shipper is deemed non-creditworthy it has the opportunity to provide adequate assurance of payment. If the shipper does so, Trailblazer may not suspend or terminate service. We recognize the need for Trailblazer to consider the individual circumstances of its shippers, and we are not requiring Trailblazer to use financial credit ratings as the sole determinant of creditworthiness. Trailblazer, however, must set forth in its tariff the financial analysis and criteria that it will employ in evaluating the creditworthiness of a shipper that, for example, does not meet a credit rating standard to ensure that Trailblazer is treating all shippers in a non-discriminatory manner.

59. We find reasonable Indicator Shippers' and USG's request that Trailblazer must include tariff language addressing a shipper's return to creditworthiness. We require Trailblazer to provide language allowing a shipper the right to request that its credit status be reevaluated at any time. Further, we will accept Indicated Shippers' proposal that Trailblazer must respond to an upgrade request within two business days. If Trailblazer determines a shipper is creditworthy, Trailblazer must terminate the security requirement. Consistent with our ruling in PG&E, within five business days of determining a shipper is

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[20] Tennessee, 102 FERC ¶ 61,075 at P 41; Natural, 102 FERC ¶ 61,355 at P 69.

creditworthy, Trailblazer must return a shipper's collateral.[21] If the form of security had been a prepayment, Trailblazer must refund the prepayment amount and any interest on the prepayment amount owed the shipper. As this refunded prepayment and interest may exceed a shipper's monthly bill, and therefore extend the prepayment period beyond one month, we will deny Trailblazer's proposal to refund by offsetting against a shipper's monthly bill. We direct Trailblazer to revise its tariff language accordingly.

G. Interest on Prepayments

1. Proposal

60. Neither Trailblazer's existing tariff nor proposed tariff contains a provision requiring the computation of interest on prepayments.

2. Comments and Reply Comments

61. Trailblazer claims the payment of interest on prepayment amounts could jeopardize their status as prepayment amounts in a bankruptcy proceeding. Trailblazer contends payment of interest is an indicator that amounts held by the service provider may be labeled a security deposit and thus likely be treated less favorably in bankruptcy.

62. Both Indicated Shippers and USG state that consistent with Commission policy in Northern, Tennessee, and North Baja, any refund of a prepayment should include interest.

63. In its reply comments, Indicated Shippers contends that bankruptcy is a relatively rare experience which should not dictate security requirements. Further, Indicated Shippers claims that any collateral impact that interest might have on a bankruptcy proceeding does not detract from the fact that Trailblazer enjoyed time value of the prepayment, and the shipper was deprived of the time value of the prepayment.

3. Commission Finding

64. In Northern, Tennessee, North Baja and Natural, the Commission found that the pipeline must provide a shipper with an opportunity to earn interest on prepayments.[22]

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[21] PG&E, 103 FERC ¶ 61,137 at P 75.

[22] Northern, 102 FERC ¶ 61,076 at P 39; Tennessee, 102 FERC ¶ 61,075 at P 38; North Baja, 102 FERC ¶ 61,239; Natural, 102 FERC ¶ 61,355 at P 72.

Further, this is consistent with other pipeline tariffs.[23] Accordingly, we order Trailblazer to revise its tariff to provide a shipper with such an opportunity. Trailblazer may either pay the interest itself or give a shipper the option to deposit prepayment funds into an interest-bearing escrow account (established by the shipper) to which Trailblazer may gain access, if necessary.

H. Security Required for New Facilities

1. Proposal

65. Trailblazer proposes to revise Section 17.1(d) of the GT&C to include tariff language providing that, in the event Trailblazer constructs new facilities to accommodate a customer for which the customer has agreed to reimburse Trailblazer, Trailblazer may require an irrevocable letter of credit from that customer in an amount up to the cost of the facilities. Since pipelines are not required to construct these facilities, they are entitled to sufficient guarantees of payment before they commit their own funds to such projects.

2. Comments and Reply Comments

66. Trailblazer, in its initial comments, clarifies that it would accept alternative forms of financial protection, such as parent guarantees.

67. In its comments and reply comments, Indicated Shippers claims the only exception to the 3-month prepayment standard should be when Trailblazer constructs facilities for the shipper. However, in its reply comments Indicated Shippers contends that Trailblazer's proposal should be revised to allow a shipper to choose what type of financial security to provide. Indicated Shippers argues that where facilities are to be constructed to serve multiple shippers, Trailblazer should only be able to require any individual shipper to provide its pro rata share of security. Indicated Shippers also contends that Trailblazer should reduce the shipper's security requirement on a yearly basis to reflect the shipper's payments for transportation service to compensate Trailblazer for the cost of the new facility.

3. Commission Finding

68. As currently written, Section 17.1(d) only provides for an irrevocable letter of credit. To provide a shipper with the other credit options other than a letter of credit,

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[23] Florida Gas Transmission Company, 66 FERC ¶ 61,140 at 61,261 (1994); Florida Gas Transmission Company, 66 FERC ¶ 61,376 at 62,258 (1994).

Trailblazer has agreed to revise its tariff to provide for other forms of credit in lieu of an irrevocable letter of credit. Therefore, Trailblazer must refile this provision to permit other forms of credit. The requirement for security is to protect Trailblazer in case of a shipper's default. However, Trailblazer is only permitted to recover the cost of the facilities once, either through transportation rates or, in the event the shipper defaults, by means of one of the assurances of future performance. We find that Trailblazer's provision is not clear on this point and therefore will require Trailblazer to refile to include such language. Further, Trailblazer needs to include language that provides that as Trailblazer begins recovering the cost of the new facilities through its rates, it must allow a corresponding reduction in the amount of the guarantee required from a shipper. In addition, we require Trailblazer to refile to include language providing that for facilities constructed to serve multiple shippers, an individual shipper's obligation should be for no more than the proportionate share of the cost of facilities. This provision, as modified, will provide Trailblazer with financial protection needed before it constructs facilities on behalf of a specific customer.

V. Discussion of Other Tariff Issues

A. Capacity Award Procedures

1. Proposal

69. In Section 6.1 (Allocation of Capacity), Trailblazer has proposed a new procedure for awarding firm capacity on its system. Under the proposal, all firm, forwardhaul capacity coming out of contract and no longer subject to ROFR procedures, where applicable, will go through an open season. The proposed tariff provisions set out the elements of an open season and the criteria for evaluating bids. In the initial open season process, bids will be based on Trailblazer's SFV rate design, limited by Trailblazer’s applicable maximum and minimum rates. Trailblazer must award capacity based on qualified bids which meet the reserve price set by Trailblazer for the initial season. The reserve price is a price equal to or less than the applicable maximum rate. Trailblazer will not accept any negotiated rate bids in the initial open season. Trailblazer will evaluate bids on a Net Present Value (NPV) basis, predicated on guaranteed revenue and using posted criteria and parameters. In the event of a tie, capacity will be allocated *pro rata* based on the MDQs requested. Trailblazer states that its initial open season process is very similar to Natural's procedures, already approved by the Commission.[24] That proceeding involved

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[24]Natural Gas Pipeline Company of America, 93 FERC ¶ 61,075 (2000), order denying reh'g, 94 FERC ¶ 61,310 (2001).

the approval of a settlement to implement a revised auction procedure for awarding firm capacity.

70. If capacity is not awarded in an initial open season, Trailblazer may award such capacity through a request procedure or an additional open season. Under the request procedure a shipper may request firm service in writing or on Trailblazer's interactive website. In either of these award procedures, negotiated rates may be bid, but evaluation is still based on NPV and posted evaluation criteria, utilizing guaranteed revenue only.

2. Comments and Reply Comments

71. In its initial comments, Trailblazer addresses three issues applicable to capacity awards raised at the technical conference. First, regarding multiple bids by affiliated entities in an initial open season and the potential for abuse, Trailblazer states that no reasonable solution to this concern has emerged. Trailblazer maintains that it will have no basis for distinguishing between legitimate and illegitimate bids by affiliated entities, let alone even knowing that bidding entities are affiliated with each other.

72. Second, regarding whether Trailblazer could require bids to be for a minimum term under an initial open season, Trailblazer states that it can set different reserve prices for different time periods in an initial open season. However, Trailblazer clarifies that under its proposal, it cannot require any minimum time period on bids or otherwise limit the term of bids in an initial open season, except for a provision relating solely to operational matters and except for situations where the capacity is not available beyond a certain date.

73. Finally, under proposed Section 6.1(c)(4), Trailblazer states that it is not obligated to award firm capacity based on bids or requests of less than one year where service is to commence more than 60 days in the future. Trailblazer maintains that this provision simply allows it not to accept short-term requests for service commencing several months in the future, before the market is generally ready to bid on firm capacity for that time period, which could significantly hamper the ability of other bidders seeking long-term, year-round firm capacity to get the capacity they desire and need.

74. Only Indicated Shippers filed comments on Trailblazer's capacity award procedures.[25] In its initial comments, and repeated in its reply comments, Indicated Shippers states that the Commission should reject proposed Section 6.1(c)(4) as it allows Trailblazer to impose a one-year minimum term requirement for capacity. Indicated Shippers maintains that this provision violates the Commission's open access

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[25]Trailblazer urges the Commission to afford no weight to Indicated Shippers' comments, since Indicated Shippers filed its initial comments out of time.

transportation policies. Moreover, Indicated Shippers argues that in a liquid and competitive market for capacity, the shippers, not the pipeline, should determine the demand for capacity. If a shipper does not need capacity until a future period, there is no reason to prevent the shipper from bidding for the capacity for that period, and the shipper whose bid has the highest net present value will win the capacity. In its reply comments, Indicated Shippers stresses that given the limited available firm capacity on Trailblazer, there is an important need for shippers to obtain future capacity when capacity becomes available. Indicated Shippers states that future capacity may be needed for future needs, for a new market that it will be serving in the near future, or to secure financing for a new facility.

75. In its initial and reply comments, Trailblazer argues that Indicated Shippers misreads proposed Section 6.1(c)(4). Trailblazer maintains that this provision does not require a minimum term of one year, but rather, simply allows it not to accept short-term requests for service commencing more than two months in the future.

76. Indicated Shippers also make three other points in its reply comments, which neither it nor Trailblazer raised in their initial comments. First, Indicated Shippers recommends that instead of the proposed five hours,[26] there must be a four-business-day advance notice of an open season for capacity available for less than one year. If there is a short open season in connection with capacity that is available for less than one year, Indicated Shippers argues that there needs to be an advance notice period sufficient to allow a prospective shipper to do preparation work, such as financial and market analysis.[27] Second, Indicated Shippers argues that Trailblazer must award capacity after the open season and at least two business days before the capacity becomes available.[28] Indicated Shippers asserts that when a shipper is acquiring capacity, it needs time to coordinate the acquisition of the capacity with the purchase of gas supplies, the acquisition of any needed capacity on upstream or downstream pipelines, and the contracting with markets to be served by the shipper's gas.[29] Third, Indicated Shippers states that in order to prevent undue

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[26] See Proposed GT&C § 6.1(b)(1)(ii), Second Revised Sheet No. 110, p.2 of 10.

[27] See Post-Technical Reply Comments of the Indicated Shippers at 2 n.3, (citing Columbia Gas Transmission Corp., 94 FERC ¶ 61,301 at 62,107 (2001)).

[28] See Proposed GT&C § 6.1(b)(1)(I), Second Revised Sheet No. 110, p.2 of 10.

[29] See Post-Technical Reply Comments of the Indicated Shippers at 3 n.6-7, (citing Columbia Gas Transmission Corp., 94 FERC ¶ 61,301 at 62,107-8 (2001)).

discrimination, the Commission should apply its policy of requiring a pipeline's tariff to describe in detail the criteria that it will use in evaluating bids for capacity.[30]

3. Request for Rehearing

77. In its request for rehearing, Indicated Shippers argues that instead of accepting and suspending the tariff sheets regarding revisions to Trailblazer's procedures for the allocation of capacity, the Commission should have rejected the proposed one-year minimum term requirement. First, Indicated Shippers argues, as it did in its comments on the technical conference, that the one-year minimum term requirement violates the Commission's open access transportation policies, since this minimum duration allows a pipeline to use its market power to leverage a shipper into bidding for capacity for a longer period than the shipper wants. Indicated Shippers asserts that Trailblazer must award capacity to a shipper that bids the recourse rate even if the shipper seeks service for less than one year. Second, Indicated Shippers argues that since a refund condition cannot remedy the impact of an unreasonable service condition, the Commission should use its authority pursuant to NGA Sections 4 and 7 and determine that Trailblazer's proposal to impose a one-year minimum term requirement for capacity can only take effect if and when the Commission approves the proposal.

4. Commission Finding

78. We agree with Trailblazer that Indicated Shippers mischaracterizes Section 6.1(c)(4) of Trailblazer's tariff. This section does not allow Trailblazer to impose a one-year minimum term requirement for capacity. Rather, it merely provides that Trailblazer is not obligated to award firm short-term capacity based on bids where service is to commence more than 60 days in the future. Since the Commission began implementing open access, we have been concerned about allowing shippers to reserve firm capacity at a future date without requiring a shipper to begin paying a reservation charge for that capacity once the transportation agreement is executed. To do so would possibly tie up long-term firm transportation service at the expense of other shippers who may place higher value on the capacity.[31] Moreover, the Commission has stated that the risk incurred by a shipper that executes a short-term contract for a distantly future date may be much less than the damage

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[30] See Post-Technical Reply Comments of the Indicated Shippers at 14 n.25, (citing Kern River Gas Transmission Co., 99 FERC ¶ 61,233 at P 15 (2002) (Kern River)).

[31] See Transwestern Pipeline Co., 95 FERC ¶ 61,165 at 61,535 (2001).

done to another shipper with a long-term need.[32] The standard policy provides for a limit of ninety days from the date transportation service is requested to be an appropriate time limit for commencement of service, which allows shippers sufficient time to coordinate their various transactions .[33] Since Trailblazer has not justified a deviation from the Commission's standard policy of a 90-day time limit, we direct Trailblazer to file tariff sheets that replace the 60-day time limit with the standard 90-day time period, which satisfies the Commission's concerns about unreasonably tying up future capacity, while also providing sufficient time for the pipeline to process the request and the shipper to execute the contract.

79. The Commission disagrees with Indicated Shippers that instead of Trailblazer's proposed five hours, a four-business-day advance notice of an open season for capacity available for less than one year is needed in order for shippers to do preparation work such as financial and market analysis. The Commission has approved similar minimum posting and bidding periods in other tariffs.[34] In Natural Gas, the pipeline proposed an identical minimum posting and bidding period (9:00 a.m. to 2:00 p.m. central clock time on a business day) applicable to firm capacity available for less than five months.[35] The Commission accepted the pipeline's proposal and rejected arguments asserted by Indicated Shippers, similar to the arguments it now asserts, requesting a longer bid period of one day for firm capacity available for less than five months:

> The Commission finds that Natural’s posting and bidding time periods reflect the pace, intensity, and speed of today’s gas transactional market. The requests of Indicated Shippers and Industrials to further extend the bid periods from

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[32] See Northern Natural Gas Co., 49 FERC ¶ 61,107 (1989), reh'g granted in part, 52 FERC ¶ 61,047 at 61,212 (1990).

[33] See Northern Natural Gas Co., 52 FERC ¶ 61,047 at 61,212, n.6 (1990).

[34] See Natural Gas Pipeline Company of America, 93 FERC ¶ 61,075 at 61,204 (2000) (Natural Gas), providing for a 5-hour initial open season minimum posting and bidding period applicable to firm capacity available for less than 5 months. Natural Gas Pipeline Company of America, FERC Gas Tariff, Sixth Revised Volume No. 1, Section 5.1(c)(1)(iii), Third Revised Sheet No. 224A.

[35] Trailblazer proposes a bid period of 9 a.m. to 2 p.m. central clock time on a business day for capacity available for less than one year.

the current tariff indicates an unrealistic view of Natural's competitive position and the needs of today's gas markets.[36]

Moreover, we find that if a one-hour notice period under the NAESB standards is sufficient for shippers to perform the necessary studies in the context of capacity release, there is no reason why the five-hour notice period here is not sufficient.[37]

80. However, although the Commission does not object to the proposed notice periods, Trailblazer has not included a tariff provision or any explanation as to how it will determine the length of time for which capacity is available. While operationally available capacity may be available for only a prescribed period of time, generally available capacity is continuously available. The Commission is concerned that Trailblazer will arbitrarily limit generally available capacity for less than one year, without an operational justification. Trailblazer is therefore required to make a compliance filing, including tariff language, describing how the time periods for available capacity will be determined.

81. In addition, Trailblazer's provisions for awarding capacity appear to permit Trailblazer to inappropriately withhold capacity when there are bids at the maximum rate. In Section 6.1(c)(4), Trailblazer proposes to award firm capacity to maximum rate bids submitted for the entire term of an otherwise valid bid or if the maximum rate bid meets Trailblazer's reserve price. This provision would permit Trailblazer to reject a maximum rate bid when that bid fails to meet the reserve price even if Trailblazer does not allocate the capacity to another shipper. Under Commission regulations, pipelines cannot refuse to sell capacity at the maximum rate. When a shipper submits a maximum rate bid, Trailblazer is permitted to sell the capacity to highest net present value bid or to the maximum rate shipper, but cannot simply withhold the capacity. We direct Trailblazer to file revised sheets consistent with this discussion.

82. Trailblazer's proposed tariff language provides that an initial open season shall be conducted on or before the date capacity becomes available.[38] However, the Commission finds that Trailblazer's tariff must provide shippers enough time to coordinate transactions after the awarding of capacity after an open season and before the capacity becomes available. Shippers need enough time to coordinate the acquisition of the capacity with the purchase of gas supplies, the acquisition of any needed capacity on upstream or downstream pipelines, and the contracting with markets to be served by the shipper's gas.

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[36] Natural Gas, 93 FERC ¶ 61,075 at 61,204.

[37] North American Energy Standards Board Standard 5.3.2.

[38] See Proposed GT&C § 6.1(b)(1)(i), Second Revised Sheet No. 110, p.2 of 10.

The Commission agrees that Indicated Shippers' proposal, recommending that Trailblazer must award capacity after the open season and at least two business days before the capacity becomes available, provides a reasonable time period. We direct Trailblazer to file tariff sheets providing for this two-day time period.

83. The Commission is satisfied with Trailblazer's tariff language in Section 6.1(c)(3), which states that Trailblazer shall post the criteria to be used in the determination of highest economic value for comparing valid bids in any open season and for comparing pending requests which are valid and competing, and that this posting will consist of a net present value formula, together with all relevant factors and parameters such as discount rates. The Commission will not require Trailblazer to describe in detail in its tariff any additional information that it will use in evaluating bids for capacity.[39] This is not necessary since Trailblazer states that although it may change the criteria, it must be consistent with Section 6. 1(c)(1), which sufficiently defines "highest economic value." Moreover, Trailblazer's tariff protects against discrimination against bidders by providing that this criteria must be continually posted on its website and any changes only apply prospectively to an open season posted one business day after the changed criteria is posted. Indicated Shippers' reliance on Kern River is misplaced since that order rejected a proposal that allowed the pipeline the unfettered discretion to choose alternate criteria from the net present value basis on which to evaluate bids, which is not the case here. If a shipper determines that Trailblazer's posted criteria is in fact discriminatory, nothing prevents a shipper from filing an objection with the Commission in the future.

B. Imbalance Charges

1. Proposal

84. Trailblazer also proposes to modify Section 14 (Imbalance Charges). If actual receipts at all receipt points under an agreement do not conform on any day to deliveries at delivery points, imbalance charges will be assessed for any imbalance between receipts and deliveries on that day. Trailblazer proposes to lower the imbalance tolerance level subject to charge, from imbalances outside 10% to imbalances outside of 5%. Trailblazer also proposes to apply charges on a graduated basis on imbalances outside the 5% tolerance level, rather than charging the maximum ITS commodity rate for all outside the tolerance level. The proposed rates are as follows: for imbalances of 5 to 10%, 125% times the

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[39]See Natural Gas, 93 FERC ¶ 61,075 at 61,206 (2000) (permitting the following information to be included in pipeline's posting of capacity in an initial open season: "[a]ny other bid requirements, conditions, criteria, restrictions or parameters" for information").

Maximum ITS Rate; 10 to 20%, 150% times the Maximum ITS Rate; 20 to 50%, 200% times the Maximum ITS Rate; and above 50%, 400% times the Maximum ITS Rate.

2. Comments and Reply Comments

85. In its initial comments, USG and ONEOK object to Trailblazer's proposal to implement daily imbalance charges as contrary to the policies established in Order No. 637.

86. In its initial comments, Trailblazer states that its proposed daily imbalance charges are reasonable since it has no storage and very limited line pack, and some type of imbalance charge will be critical as its customer base expands to include substantial end-use load because such charges will help discourage "swings" which the system cannot accommodate. However, given the opposition to this proposal, Trailblazer states in its initial and reply comments that it agrees to withdraw it, without prejudice to its refiling this proposal or submitting a revised proposal at a later time.

3. Request for Rehearing

87. On rehearing, Indicated Shippers argues that the Commission should reject Trailblazer's proposed daily imbalance penalty. Indicated Shippers concludes that if the Commission continues to find that it should gather more information about this daily imbalance penalty proposal, it should only allow the daily penalty to go into effect if and when the Commission approves the penalty.

4. Commission Finding

88. Since Trailblazer states in its initial and reply comments that it agrees to withdraw its daily imbalance penalty proposal given the opposition to this proposal, the Commission accordingly rejects the proposed penalty provisions, and directs Trailblazer to file tariff sheets removing these penalty provisions from its tariff.

C. ROFR Term Matching Cap

1. Proposal

89. Trailblazer proposes to revise the existing term cap that a shipper must match to retain capacity, from a term of up to five years to a term of up to 20 years.

2. Comments and Reply Comments

a. The Maximum Term Requirement

90. In its initial comments, Hastings advocates a ten-year cap as a compromise, and requests that Trailblazer amend its tariff accordingly. Hastings argues that the only evidence available on the contract term issue on Trailblazer's system is found in the contract terms recently elected by the Expansion 2002 shippers, who, with one exception of a 11-year term, all elected ten-year terms. Therefore, Hastings concludes that ten-year terms not only match shippers' demand on the system, but are also sufficient to support the financing necessary for an expansion of Trailblazer capacity.

91. In its reply comments, Trailblazer favors the ten-year cap compromise if it is acceptable to the active parties in this case. Subsequently, Duke, Gypsum, and Indicated Shippers filed comments stating that in light of the information provided by Hastings a 10-year term matching cap is reasonable and justified for the purposes of this proceeding, and urging Trailblazer to adopt the ten-year cap compromise.

92. On March 31, 2002, Trailblazer filed a letter to clarify and augment the record. In the letter, Trailblazer states that since several active participants endorse the ten-year proposal and none of the active participants has expressed any opposition to it, Trailblazer accepts the ten-year compromise resolution of this issue. Trailblazer urges the Commission to determine in this case that Trailblazer's Tariff reflects the agreement of the parties that ten years should be substituted for five years as the maximum term which can be considered in evaluating bids submitted as part of the ROFR process.

b. The Applicable ROFR Rate

93. In its initial comments, Hastings objects that Trailblazer's existing tariff language does not clearly distinguish between the two sets of rates (rates applicable to Existing System Shippers and Expansion 2002 shippers) and does not describe with requisite clarity the rate which must be bid by a shipper under the ROFR process. Hastings states that although at the technical conference Trailblazer confirmed that it has elected to forego the applicability of higher expansion rates for existing shippers exercising ROFR rights, it nonetheless remains important that the tariff contain no ambiguity on this point. Thus, Hastings requests that Trailblazer file revised sheets to clarify this issue, and also that Trailblazer confirm in its reply comments that Existing System recourse rates will apply in Hasting's ROFR process.

94. Regarding the applicable ROFR rate, in its reply comments to Hastings, Trailblazer states that since no proposal to change the rate in the ROFR process is pending, and since Trailblazer has not included in this docket any tariff change to apply the higher of the Existing System or Expansion 2002 recourse rates in every ROFR process, this is not an

issue in this proceeding, much less the technical conference. Nevertheless, Trailblazer confirms in its reply comments that in the ROFR process, the recourse rate which applies under Trailblazer's currently effective Tariff would be the Existing System recourse rate if the contract subject to the ROFR is an existing System contract and the Expansion 2002 recourse rate if the contract subject to the ROFR process is an Expansion 2002 contract. Trailblazer states that none of its proposals would change this procedure.

3. Commission Finding

95. In its order responding to the remand of Order No. 637, the Commission permitted pipelines to remove the required five-year term matching cap altogether.[40] As a result, an existing customer seeking to renew an expiring contract would be required to match the term in a third party bid, regardless of length. However, the Commission has allowed the parties to agree to a ROFR matching term cap of a different length.[41] Since the parties have agreed with Hastings' compromise proposal that a ten-year term matching cap matches the shippers' demand on the system and also sufficiently supports financing necessary for an expansion of Trailblazer capacity, the Commission accepts the ten-year matching term cap as reasonable and justified for the purposes of this proceeding. The Commission therefore directs Trailblazer to remove the proposed tariff language providing for a 20-year cap and instead file tariff sheets providing for a ten-year cap.

96. Regarding the ROFR process, Trailblazer clarifies in its reply comments that the recourse rate that applies under its currently effective Tariff would be the Existing System recourse rate if the contract subject to the ROFR is an existing System contract and the Expansion 2002 recourse rate if the contract subject to the ROFR process is an Expansion 2002 contract, and that none of its proposals would change this procedure. In light of the confusion expressed on the distinction between these two groups of customers, the Commission directs Trailblazer to file tariff language reiterating the clarifications expressed in its reply comments on this issue.

D. Capacity Release Tiebreaker

1. Proposal

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[40] Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 (2002).

[41] See Id. at 61,525, (citing Order No. 636-B, 61 FERC ¶ 61,272 at 62,026-7 (1992)).

97. Trailblazer proposes a "first-in-time" tiebreaker allocation mechanism for multiple winning bids for released capacity, as opposed to the current *pro rata* method.

2. Comments and Reply Comments

98. In its initial and reply comments, Indicated Shippers acknowledges that gaming via sham affiliate bids under the current *pro rata* method is a problem, but argue that the proposed first-in-time method has bigger flaws. First, Indicated Shippers argues that Trailblazer's tariff does not appear to provide for advance notice of an upcoming open season for released capacity. Hence, if Trailblazer or the releasor gives advance notice of the open season to a select group of shippers, those shippers would have a huge advantage. Indicated Shippers maintains that both the pipeline and the releasing shipper would have an incentive to give an affiliate or a favored customer such an unfair advance notice. Second, Indicated Shippers argues that the first-in-time tiebreaker presents serious logistical problems, such as the problems that plagued the "race to the courthouse" that accompanied the first-in-time method for determining venue in connection with petitions for review. Third, Indicated Shippers states that the first-in-time method also could give a few shippers excessive control over capacity, and with the serious shortage of take-away capacity in the Rocky Mountain region, those shippers would have unfair leverage in negotiating with producers. Indicated Shippers argues that this situation is anti-competitive, will exacerbate the low gas prices in the Rocky Mountains, and dampen production. Finally, Indicated Shippers argues that the precedent relied upon in the December 31 Order, approving first-in-time tiebreakers, does not apply in this case. Indicated Shippers states that those situations appeared to be based on the assumption that a bidder can always increase its bid for the capacity, which does not apply in the present instance.

99. Indicated Shippers recommends an alternative that it claims avoids these problems. Indicated Shippers suggests that Trailblazer should use a pro-rata tiebreaker in which all affiliates of a single company are treated as one bidder, with a cap on the aggregate bids of the company at the overall capacity that is available for release.[42] Indicated Shippers argues that Trailblazer can determine affiliate bidders by sending each bidder a list of other bidders at the end of the bidding process, and requiring the bidder to notify Trailblazer if any of its affiliates are bidders. Moreover, Indicated Shippers asserts that the aggregate affiliate bid approach avoids the problem of distinguishing which affiliate bids are legitimate and which are not since this method applies whenever affiliates are bidding.

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[42] See Post-Technical Conference Reply Comments of the Indicated Shippers at 6 (recommending that this same approach also should be used as the tiebreaker in connection with open season).

100. In its reply comments, Trailblazer notes that the issue of the proper tiebreaking method to be applied in the capacity release context was decided by the Commission in the December 31 Order, and was not one of the issues deferred to the technical conference procedure. Thus, Trailblazer argues that Indicated Shippers' comments on this issue in the technical conference procedure must be disregarded as an inappropriate collateral attack. Rather, Trailblazer asserts that the issue must be addressed on rehearing of the December 31 Order.

3. Request for Rehearing

101. Indicated Shippers' request for rehearing on the issue of Trailblazer's proposed capacity release tiebreaker contains the same objections and the same proposed alternative that is stated in its comments on the technical conference described above. On rehearing, Indicated Shippers adds that if the Commission approves the first-in-time tiebreaker, the Commission should at least require adequate notice of the bidding period so that all parties have an equal chance to bid for the capacity.

4. Commission Finding

102. The Commission is not persuaded that Indicated Shippers has identified a significant problem with Trailblazer's "first-in-time" default mechanism for breaking ties. The Commission believes that no single tiebreaker method is definitely better than other methods; each system has advantages and disadvantages. So long as its method is reasonable, Trailblazer may choose any method it wishes for inclusion as the default tiebreaker in its tariff. The Commission has found that the "first-in-time" method is reasonable, fair, and nondiscriminatory.[43] In addition, Trailblazer's currently effective tariff provides that a releasing shipper may choose a different tiebreaker mechanism for evaluating bids for a particular release.

103. We disagree with Indicated Shippers' argument that our precedent approving first-in-time tiebreakers does not apply in this case since prior situations were based on the assumption that a bidder can always increase its bid for the capacity. The Commission has found the first-in-time method to be reasonable in a variety of circumstances. Moreover, we find that the first-in-time method is appropriate even in the context of a constrained pipeline. Since released capacity is still subject to the maximum rate, the Commission is

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[43]United Gas Pipe Line Co., 65 FERC ¶ 61,006 at 61,070 (1993) (holding the first-in-time method as reasonable, while rejecting a protest arguing for the *pro rata* method); Arkla Energy Resources, a division of Arkla, Inc., 62 FERC ¶ 61,076 at 61,465 (1993); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,357 at 62,417 (1992).

not persuaded that a shipper that is first-in-time will have unfair leverage with producers.

104. Lastly, we find that Trailblazer's proposal for the award of released capacity conforms to the North American Standards Board Standard 5.3.4 which also prescribes a first-come, first-served tiebreaker. Therefore, we approve Trailblazer's proposed modification to a first-in-time tiebreaker mechanism.

The Commission orders:

(A) Trailblazer's tariff sheets listed in the Appendix are accepted, to become effective on the date of this order, subject to further modification, and Trailblazer is directed to file, within 30 days of the date of issuance of this order, revised actual tariff sheets consistent with the discussion of the body of this order.

(B) The Indicated Shippers' request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Trailblazer Pipeline Company
FERC Gas Tariff, Third Revised Volume No. 1

Tariff Sheets

Second Revised Sheet No. 110
Original Sheet Nos. 110A through 110J
Second Revised Sheet No. 118
First Revised Sheet No. 119
Original Sheet No. 119A
Fourth Revised Sheet No.132
Second Revised No. 133
First Revised Sheet No. 140
First Revised Sheet No. 141
Original Sheet No. 141A
Original Sheet No. 177A
Fourth Revised Sheet No. 177